

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 205554

Re: In the Matter of Framework for Broadband Internet Service; GN Docket No. 10-127

Dear Ms. Dortch:

The Broadband Development and Deployment Council (Council) submits these comments in response to the Federal Communications Commission's (Commission) Notice of Inquiry (NOI) "In the Matter of Framework for Broadband Internet Service" GN Docket No. 10-127. The Council supports the Commission's adoption of a "third way" as set forth in the NOI.

Under the leadership of Governor Paterson, the Council is charged with "universal deployment of broadband to ensure the welfare of New York's citizens and economy" and developing the New York State Broadband Strategy. We support the integration of broadband into the state's infrastructure. As the communications networks evolved to incorporate this technology into telecommunications facilities, the state has worked with industry participants to protect the state's interests.

The Council emphasizes that the states have an important role in the regulation of telecommunications services. The deployment of broadband Internet service is the latest evolution in technology of the communications network. The best model for regulating this evolution in technology of the communications network is for the Commission to continue to work in partnership with the states. In this way, the Commission and the states can best support the technological evolution, while continuing to allow the states to provide for the safety and welfare of their end-users.

Approaches to Classification

The Council supports the Commission's proposed "third way" "under which the Commission would classify the Internet connectivity portion of the broadband Internet service as a telecommunications service, but would simultaneously forbear from all, but a small handful of provisions, necessary for the effective implementation of universal service, competition and small business opportunity, and consumer protection policies." We concur that regulating broadband Internet service by means of application of Title II regulation, to the extent necessary to ensure the security and reliability of the national telecommunications networks, along with basic consumer protections is the best path. We also agree that the Commission's "third way" is consistent with Congress' "strong interest in ubiquitous deployment of high speed broadband communications networks."

Broadband Internet service is an important component of telecommunications. The adoption of the Commission's "third way" recognizes that there is competition in this segment of the marketplace in many regions, but that there are some public interest policies that the market may not naturally implement. Adoption of the Commission's "third way" will help ensure regulatory certainty for broadband deployment and establish standards in the areas of emergency reporting, network reliability, consumer protections and discrimination. We anticipate that the State's Public Service Commission will work in partnership with the Commission in regulating this evolution of the interconnected communications network. In this way, the state can best support this technological evolution, while continuing to provide for the safety and welfare of its end-users.

Universal Service

The Council continues to reserve judgment on the expansion of the federal Universal Service Fund (USF) to encompass high cost and low income programs related to broadband services. Until the work is done that pinpoints where a business model will not support the necessary infrastructure, it is premature to expand the program. However, if the Commission does recommend expanding the high cost subsidy program to include broadband services, states that are net contributors to the fund or who have expended their own funds to support/encourage broadband deployment in their state, such as NY, should either have their contribution to the fund proportionately reduced or receive a credit/offset for such amount against future assessments. Additionally, if the Commission determines that it is necessary to use the USF to expand the availability of broadband, the Commission should consider augmenting such services by allocating monies for public computing centers at community anchor institutions to reach the greatest number of people at a reasonable cost.

Access for Individuals with Disabilities

We also encourage disability access policies regarding people with disabilities to be standardized at the federal level. However, the Commission should create policies that encourage new technologies that have the likelihood of increasing access while at the same time reducing costs. The rapid evolution of these types of services should be encouraged to take place and policies should be constructed to allow the rapid proliferation of these services to people with disabilities for their own acceptance or refusal. We do not encourage policies that either impede innovation or inadvertently protect aging, antiquated and expensive systems that provide people with disabilities less choice and less access.

Addressing Harmful Practices by Internet Service Providers

We recommend that the Commission rely on the market in the first instance and that government intervention be tailored to addressing important public policy issues that the market has not addressed. In that vein, we support the continued use of the ideals identified in FCC's four principles for broadband networks as contained in its September 23, 2005 Policy Statement to define broadband providers' obligations for nondiscrimination and network managements techniques. These policies should be technology neutral and apply to all companies providing Internet access/ broadband services. Consistent with the FCC's four principles, a service provider should not deliberately impede the flow of information between a content provider and a willing subscriber. Companies should provide adequate capacity to content service providers and treat all similarly situated users in a non-discriminatory fashion without providing advantage to specific content providers. In times of emergency or high volume use, the need to throttle high capacity users and applications might exist. If such controls are disclosed to subscribers then they could constitute reasonable network management practices.

Other Approaches to Oversight

Considering the dynamic nature of the Internet and the speed in which technologies emerge and die, the Council welcomes the suggestions by Verizon and Google for the creation of technical advisory groups. New York State is home to one of the biggest content producing economies in the world and it is imperative for us to make sure their needs are balanced in a thoughtful structured process to ensure access to the consumer is not jeopardized. We are also sensitive to the massive private investment made by Internet Service Providers who have an obligation to their stockholders/investors to expand, maintain and grow to maximize profit. We believe that the suggested forum will enable a thoughtful dialog on best practices with respect to network management and other quality of service issues. We look forward to the opportunity to contribute

to this effort if it is pursued since we too must maintain balance between their frequently competing industries as well as the needs of consumers

Marketing Practices

We encourage the FCC to create a standard or metric on how broadband services can be offered and measured based on speed. Consumers should not be confused and should be able to compare and contrast services from a variety of providers. Currently, it is too difficult for consumers to take into account latency, jitter, speed and other metrics to determine how these will impact their end-user experience or potential preclusion from participating in certain applications that are sensitive to quality of service.

Technical and Functional Characteristics

The Commission should provide for mechanisms to allow access to the enhanced data from the providers under the Broadband Data Improvement Act so research can be done giving policy makers the best picture possible when forming their policies. We encourage the Commission to work with the National Science Foundation to create the legal frameworks and policies needed to allow research access to data to allow the proper documentation, testing, simulation and analysis that is needed. It is our expectation that proper privacy safeguards would be applicable to the use of such data in order that consumers are protected from indiscriminate disclosure of confidential information.

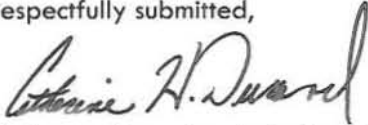
Terrestrial Wireless and Satellite Services

We support including wireless broadband under the "third way" because just as wired broadband services are replacing wire line services, wireless broadband may offer a reasonable alternative to wire line broadband services. The FCC should preclude technologies that do not meet a minimum requirement of a certain broadband definition or characteristic instead of discounting a technology entirely by name. While traditional geosynchronous satellite may have latency issues due to distance of transmission and buffering, alternatively low altitude satellites or stationary blimps may accommodate the requirements while at the same time have the benefit of covering vast areas of land.

State and Local Regulation of Broadband Internet and Internet Connectivity Services

New York anticipates that the New York Public Service Commission (NYPSC) will work in partnership with the Commission in regulating this new interconnected communications network. In this way, we can best support the technological evolution, while continuing to provide for the safety and welfare of our end-users. States have core interests irrespective of the platforms being used. The NYPSC's core interests have not changed - maintaining high quality, reliable and secure communications infrastructure, and protecting the consumers from unfair or discriminatory practices. As networks evolve, states will remain interested in issues such as carrier of last resort obligations, carrier interconnection, intercarrier compensation, network reliability, and interoperability. It is essential that any federal regulatory approach include the states' ability to ensure these core interests. Outages to one communications network can, and often do, have a profound and cascading impact on other networks potentially affecting millions of end-users. New York believes that it is important that the Commission not preempt states from addressing issues that arise in their states. This approach would allow states to take into consideration the varying market forces, deployment status, and needs of the citizens in each state.

Respectfully submitted,



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